

*Via Electronic Filing*

October 31, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., SW  
Washington, DC 20554

*Re: Written Ex Parte Presentation – MB Docket No. 12-108*

Dear Ms. Dortch:

Consumer Technology Association (“CTA”), formerly known as the Consumer Electronics Association (“CEA”), briefly responds to the October 24, 2016 letter from Telecommunications for the Deaf and Hard of Hearing, Inc. (“TDI”) in this docket.<sup>1</sup> CTA already has addressed the claims and arguments in the TDI letter in its comments and reply comments on the Second Further Notice of Proposed Rulemaking regarding user interfaces in MB Docket No. 12-108.<sup>2</sup>

Although the TDI letter urges the Commission to impose requirements for user display settings for closed captioning for a wide range of apparatus (“closed captioning display settings”), the record shows that there is no jurisdictional basis for imposition of these requirements in either the Television Decoder Circuitry Act or the Twenty-First Century Communications and Video Accessibility Act of 2010.<sup>3</sup>

Moreover, CTA has shown that it would be unwise as a matter of policy for the Commission to regulate closed captioning display settings at the present time.<sup>4</sup> With covered entities in the midst of implementing

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<sup>1</sup> Letter from Drew Simshaw, Counsel to TDI, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 12-108 (Oct. 24, 2106) (“TDI letter”).

<sup>2</sup> *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 13914 (2015). *See also* CTA f/k/a CEA Comments, MB Docket No. 12-108 (filed Feb. 24, 2016) (“CTA Comments”); CTA f/k/a CEA Reply Comments, MB Docket No. 12-108 (filed Mar. 7, 2016) (“CTA Reply Comments”). All references to “Comments” in this letter are to comments filed in MB Docket No. 12-108 on or about February 24, 2016.

<sup>3</sup> *See* CTA Reply Comments at 2, 3-5.

<sup>4</sup> *See id.* at 7.

the existing user interface rules, including the rule governing closed captioning activation, by the compliance date of December 20, 2016, imposing additional requirements on top of the existing rules would be confusing, wasteful, and counterproductive.<sup>5</sup> Instead, the Commission should assess the effect of the extensive current regulations once compliance is required, before even considering imposing more requirements.<sup>6</sup> By so doing, the Commission will encourage the development of accessibility options and the innovation that is a natural result of designing products with accessibility in mind to begin with.

As discussed in its reply comments, CTA also continues to oppose the “first level of a menu” requirement proposed in the TDI letter and elsewhere,<sup>7</sup> but notes that user display settings could be possible on other levels. A “first level of a menu” rule would unduly limit design evolution, discouraging innovation in accessibility.<sup>8</sup> In its short letter, TDI identifies several different types of video players: in-browser players, on-device apps, set-top boxes, and TVs.<sup>9</sup> This listing illustrates the variety of form factors, network conditions, and device interactions that manufacturers must account for when determining the best way to design settings options. This variety benefits all consumers, including those with disabilities, but makes a one-size-fits-all approach particularly inappropriate. Innovative companies are experimenting with user interface design, which necessarily involves tradeoffs between the information and choices available at different menu levels.

TDI’s claim that implementing a “first level of a menu” rule is a “small software modification” is completely unfounded and contrary to industry experience.<sup>10</sup> Changes to the user interface are part of an overall development process that balances competing usability priorities for all users. Changing the level or location of a settings menu is a significant undertaking involving coordinated design, development, testing, and manufacture.

Any new regulations should acknowledge the dynamic nature of the consumer technology industry by preserving the availability of safety valves such as waivers, especially when implementation of a requirement is technically infeasible. Moreover, such regulations should include the achievability standard, consistent with the Commission’s prior practice in the user interface rules.<sup>11</sup>

If the Commission adopts new regulations in this area, it should set a sufficient transition period, such as three years, to provide industry with a reasonable chance of implementing the regulations successfully.

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<sup>5</sup> See *id.*; see also AT&T Comments at 5.

<sup>6</sup> See CTA Reply Comments at 7; TIA Comments at 1.

<sup>7</sup> See CTA Reply Comments at 6-7.

<sup>8</sup> See NCTA Comments at 6.

<sup>9</sup> See TDI Letter at 2.

<sup>10</sup> See *id.* at 3.

<sup>11</sup> See *Accessibility of User Interfaces, and Video Programming Guides and Menus; Accessible Emergency Information, and Apparatus Requirements for Emergency Information and Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking 28 FCC Rcd 17330, 17379-80 ¶¶ 77-78 (2013).

Pursuant to Section 1.1206 of the Commission's rules,<sup>12</sup> this letter is being electronically filed with your office. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

***/s/ Julie M. Kearney***

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Vice President, Regulatory Affairs

cc: Maria Mullarkey  
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<sup>12</sup> 47 C.F.R. § 1.1206.